

## **Exhibit 18**

**COPY**

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
ORCHARD HOTEL, LLC,

Plaintiff,

- against -

Index No.  
850044/2011

D.A.B. GROUP LLC, ORCHARD CONSTRUCTION LLC,  
FLINTLOCK CONSTRUCTION SERVICES, LLC, JJK  
MECHANICAL INC., EDWARD MILLS & ASSOCIATES,  
ARCHITECTS PC, CASINO DEVELOPMENT GROUP,  
INC., CITYWIDE CONSTRUCTION WORKS INC.,  
EMPIRE TRANSIT MIX INC., MARJAM SUPPLY CO.,  
INC., ROTAVELE ELEVATOR INC., SMK  
ASSOCIATES INC., FJF ELECTRICAL CO. INC.,  
CITY OF NEW YORK, NEW YORK STATE  
DEPARTMENT OF TAXATION AND FINANCE,  
LEONARD B. JOHNSON, CITY OF NEW YORK  
ENVIRONMENTAL CONTROL BOARD, BROOKLYN  
FEDERAL SAVINGS BANK, STATE BANK OF TEXAS,  
JOHN DOE #1 THROUGH JOHN DOE #100, the  
last 100 names being fictitious and unknown  
to plaintiff, the persons, or parties  
intended being the tenants, occupants,  
persons or corporations, if any, having or  
claiming an interest in or lien upon the  
premises described in the complaint,

Defendants.

-----X

228 East 45th Street  
New York, New York

January 7, 2013  
2:40 p.m.

**EXAMINATION BEFORE TRIAL of BRUCE BARRY**

GORDON, a Non-Party Witness in the above-entitled action,  
at the above-mentioned place, before John Pisanò, a

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1  
2 Notary Public of the State of New York, taken pursuant to  
3 Article 31, Section 3101 et seq. of the C.P.L.R., and  
4 pursuant to Judicial Subpoena and Notice Of Deposition  
5 Upon Oral Examination.

6 \*\*\* \*\*

7  
8  
9 A P P E A R A N C E S:

10 MORRISON COHEN LLP

11 Attorneys for Plaintiff, ORCHARD HOTEL, LLC  
12 and Defendant, ORCHARD CONSTRUCTION, LLC  
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14 New York, New York 10022

15 BY: BRETT D. DOCKWELL, ESQ.

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18 229 Seventh Street - Suite 300  
19 Garden City, New York 11530

20 BY: WILLIAM G. WALLACE, ESQ.

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22 Attorneys for Defendant, FLINTLOCK  
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BY: LARRY HOLLANDER, ESQ.

(Continued...)

A P P E A R A N C E S Continued:

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BY: TARA B. MULROONEY, ESQ.

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Attorneys for Non-party Witness,  
JOANNE B. GALLO  
222 Old Country Road - 2nd Floor  
Mineola, New York 11501

BY: JAMES G. MARSH, ESQ.

ALSO PRESENT:

BEN ZHAVIAN

\*\*\* \*\*

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1 B. Gordon

2 A. Yes.

3 Q. When did you first become aware of that loan?

4 A. Around September of 2010.

5 Q. How was it brought to your attention and why  
6 was it brought to your attention?

7 A. Joanne had a call scheduled with the owner  
8 and she asked me the day before to take a look at the  
9 file and to take a look at it and join her on the call.  
10 We had a rule that two people had to be on a call and  
11 nobody else was familiar with it. Actually, we were the  
12 work-out department at the time, so I had to be on pretty  
13 much every call.

14 Q. So it was just the two of you?

15 A. Yeah, I think the third guy didn't join us  
16 until at least a few months after that.

17 Q. Do you know why this particular loan was in  
18 the work-out area of the bank at that time?

19 A. No.

20 Q. To your knowledge, was it a non-performing  
21 loan, was it delinquent in some respect?

22 A. I remember Joanne telling me at the time  
23 they had two issues with it.

24 Q. Do you remember what they were?

25 A. One was that it was being built in excess of

B. Gordon

did I maintain a desk file?

Q. Yes.

A. No.

Q. Do you have any personal records, at home or some place else, at your office now, regarding that period of time?

A. No.

Q. This meeting that took place with Rick Maher and the owner and some others and Joanne Gallo and yourself, what was discussed at this first meeting that you were at?

A. It arose because we were asked to make an advance and Flintlock, who by then, whenever this was, was the general contractor, refused to sign the lien release.

Q. And what was discussed at the meeting?

A. Why they wouldn't sign the lien release and why we wouldn't advance unless they did.

Q. Is it fair to say they wouldn't sign the lien release because they believed they were owed some money?

A. Well, they said they hadn't been paid.

Q. Did that meeting result in a resolution of some kind?

1 B. Gordon

2 guidelines or guidelines between you and Ms. Gallo as the  
3 work-out department at the time, that would determine  
4 what loans would be included in the virtual data room?

5 A. There were no written guidelines. We went  
6 through the portfolio together and with the approval of  
7 the loan work-out committee of the board, put certain  
8 loans up for sale.

9 Q. Do you recall addressing the topic of the  
10 Allen Street Hotel or Orchard Street Hotel loan?

11 A. Not specifically. You mean to put it up on  
12 --

13 Q. Yes.

14 A. No. I mean, we looked at over a hundred  
15 loans.

16 Q. Do you have any recollection, as you sit  
17 here today, as to why that particular loan -- I know  
18 technically it's two loans we're talking about but one  
19 project -- why that particular loan was included, it was  
20 decided among you to include it in the virtual data room?

21 A. Not specifically. Let me think about that.  
22 I think I remember our motivation.

23 Q. And what was that?

24 A. That we didn't trust Mr. Zhavian.

25 Q. Let me go back.

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B. Gordon

What were the feelings about the project  
itself?

A. Well, the project itself had some problems.

Q. What were those?

A. There was a restaurant foundation built on  
property that we didn't have a mortgage on that was  
adjoining that another bank did.

Q. Anything else?

A. There were two extra floors and we weren't  
necessarily sure the project would be, the superstructure  
would be completed in time to grandfather them. And  
Mr. Zhavian had, on more than one occasion, failed to pay  
the contractor with funds that we had advanced.

Q. So, when you first heard from Mr. Aviram, I  
believe you said it was through Miss Gallo, she either  
referred --

A. Well, he called her. I don't think she knew  
him either.

Q. What was the initial conversation like?

A. He had gone through the portfolio and he  
had, I think, three loans that he was interested in  
buying. I don't remember what the other two were.

Q. Did there come a point in time when he made  
an offer on this particular loan?



1 B. Gordon

2 A. Yes, subject to due diligence.

3 Q. And before that was there any other interest  
4 by any other parties in this project?

5 A. I don't remember.

6 Q. In the early part of 2011, January,  
7 February, was there any discussion with the owner,  
8 Zhavian or anybody on his behalf, regarding an extension  
9 of the maturity date of this loan?

10 A. I believe there was.

11 Q. Were you engaged in that conversation?

12 A. Peripherally. Joanne was actually doing the  
13 talking. But I was aware of it.

14 Q. What were you aware of?

15 A. That it had a maturity coming up. I forget,  
16 March, April, something like that. And that Mr. Zhavian  
17 obviously wanted to extend it and that we were  
18 considering it. Or considering taking it to the board  
19 actually would be more accurate.

20 Q. And that would have to go to the work-out  
21 committee of the board?

22 A. Yes.

23 Q. Do you remember who was on that work-out  
24 committee of the board back in 2011?

25 A. Mr. Kielty, Mr. Williams, a lady lawyer,

1 B. Gordon

2 Q. And again, just generally, not specifically  
3 to this loan, if it was a performing loan and your group,  
4 for lack of a better term, would recommend to the loan  
5 committee to either modify or extend a term on a fully  
6 performing loan, that decision ultimately could be made  
7 by the committee; correct?

8 A. Yes.

9 Q. It did not need full board approval?

10 A. Unless it was an awfully big loan.

11 Q. Now, things were a little different in the  
12 latter part of 2010 into 2011, because the OTS had some  
13 involvement, did it not?

14 A. Starting sometime in the first quarter of  
15 2011, yes.

16 Q. So, you're not there as long as OTS is  
17 there?

18 A. A few months.

19 Q. But that's the life of a work-out guy, I  
20 guess.

21 A. Yes.

22 Q. If a loan, again just generally speaking, if  
23 a loan at that time were to be either modified or  
24 extended, the term, it would require OTS approval? Do  
25 you know?

1 B. Gordon

2 It was during that period, I believe, that we sent it to  
3 the OTS. When they actually asked, I don't know.

4 Q. So, you think it may be a little earlier  
5 than that?

6 A. No idea.

7 Q. My question then is, you, and when I say you  
8 I'm talking about you and Joanne, maybe a third person,  
9 made the recommendation to the committee; correct, the  
10 bank committee?

11 A. Yes.

12 Q. And the bank committee authorized you then  
13 or Joanne to make the request of OTS?

14 A. Yes.

15 Q. And Joanne did make the request of OTS?

16 A. As far as I remember, yes.

17 Q. Do you recall ever receiving or Joanne ever  
18 telling you that she received a response from OTS on that  
19 request?

20 A. No.

21 Q. No, you don't recall or no, you never got a  
22 response?

23 A. As far as I know, we never got a response.

24 Q. Did Joanne ever contact OTS after the  
25 request was made, following up on the status of the

1 B. Gordon

2 We looked and couldn't find a set in the office.

3 Q. When you say "our engineer," you're talking  
4 about Mr. Koch?

5 A. Yes.

6 Q. He was an outside contractor for the bank?

7 A. Yes.

8 Q. He was not employed by the bank, was he, as  
9 far as you know?

10 A. He wasn't an employee, he was like me, a  
11 consultant.

12 Q. Do you know when the sale of loan actually  
13 closed?

14 A. Not specifically. It took awhile. April or  
15 May I'm thinking of 2011.

16 Q. I'm going to show you what has been  
17 previously marked at Miss Gallo's deposition as I  
18 (handing). Take a look at that, see if that refreshes  
19 your recollection.

20 A. Okay, let's see how good my recollection is.  
21 That late (referring)? Okay.

22 I guess it was after June 3rd (referring).

23 Q. If I told you it was June 17th, does that  
24 mean anything?

25 A. No. I believe you.

B. Gordon

MR. WALLACE: Do you want to jump in  
and I'll look at my notes? So I don't hold  
things up (referring).

MR. HOLLANDER: Sure.

EXAMINATION BY MR. HOLLANDER:

Q. Good afternoon, Mr. Gordon.

A. Good afternoon.

Q. Larry Hollander. I represent Flintlock  
Construction Services.

A. How are you?

Q. Fine. Nice to meet you.

I'm going to refer to them either as  
Flintlock or FCS, Flintlock Construction Services.

A. Yes, I've seen that.

Q. Did you personally have any involvement with  
respect to approval or any action whatsoever by Brooklyn  
with respect to the Flintlock/D.A.B. construction  
contract?

A. No.

Q. Would it be fair to say that you first saw  
the contract well after August of 2010?

MR. MARSH: Objection to the form of  
the question.

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